TARA SINGH v. HO NUET HONG

[A.C.J. (Buttrose J.) July 28, 1961]

[Singapore — District Court Appeal No. 9 of 1961]

Moneylending — Outstanding account — Collection of, by ex-moneylenders — Whether amounting to carrying on the business of moneylending — Moneylenders Ordinance (Cap. 193) — Moneylenders Ordinance, 1959, s.24 — Meaning of "Moneylender."

The substantial questions in this case were whether a moneylender by virtue of the Moneylenders Ordinance (Cap. 193) was a moneylender within the provisions of section 24 of the new Moneylenders Ordinance, 1959, and whether collection of outstanding accounts as at September 11, 1959 (the date of coming into force of the new Ordinance) constituted a carrying on of business as a moneylender under the provisions of the new Ordinance.

Held: (1) whether a person is or has been a moneylender within the meaning of the new Ordinance on or after September 11, 1959 when it came into force is a question of fact in each case. On the facts the appellant is not a moneylender and therefore section 24 of the new Ordinance does not apply to him;

(2) on the coming into force of the new Ordinance the appellant did not propose to continue his business of moneylending but only to collect his outstanding accounts as at that date. This does not constitute a carrying on of business of a moneylender within the meaning of the new Ordinance.

Case referred to:—

(1) *Ramanuj Pandey* v. *Stephen* [1960] M.L.J. 69.

DISTRICT COURT APPEAL.

K. K. Bezboruah for the appellant.

K. Gould appeared as *amicus curiae*.

Respondent in person.

Cur. Adv. Vult.

Buttrose J.: The substantial question for determination in this appeal turns on the construction of section 24 of the Moneylenders Ordinance, 1959 (No. 58 of 1959) hereinafter referred to as the new Ordinance.

The section reads as follows:—

"24. (1) Where in any proceedings taken in any Court by a moneylender for the recovery of any money lent whether before or after the coming into operation of this Ordinance or the enforcement of any agreement or security made or taken in respect of money lent either before or after the coming into operation of this Ordinance any dispute arises as to the amount of the money lent to and received by the borrower the burden of proving such amount shall be on the moneylender.

(2) The fact that the borrower has signed a note or memorandum which complies with the provisions of section 16 of this Ordinance and in which the amount of the money lent to and received by the borrower is set out shall not of itself raise any presumption that the amount of money so set out was actually lent to or received by the borrower."

The learned District Judge held that the section was retrospective in operation not only as regards moneylenders which, in my view, quite clearly it is, but also as regards persons who had ceased to be moneylenders prior to the new Ordinance coming into force.

The case for the appellant was that a man, who was a moneylender prior to the new Ordinance coming into force, but who has not taken out a licence thereunder or carried on business as a moneylender after it came into force does not come within the definition of moneylender. It was submitted that the section could only have retrospective effect with reference to those persons who are bound by the new Ordinance, i.e., moneylenders and not to those who are not.

The term "moneylender" is defined in section 2 of the new Ordinance as follows:—

"'Moneylender' includes every person whose business is that of moneylending or who carries on or advertises or announces himself or holds himself out in any way as carrying on that business whether or not that person also possesses or earns property or money derived from sources other than the lending of money and whether or not that person carries on the business as a principal or as an agent . . . . ."

It was not in dispute that at the time when the loan was made the appellant was a moneylender within the meaning of the term as defined in the Moneylenders Ordinance (Chapter 193) hereinafter referred to as the old Ordinance.

Is the appellant a moneylender under the new Ordinance? Whether a person is or has been a moneylender within the meaning of the new Ordinance on or after the 11th September, 1959 when it came into force is a question of fact in each case. While the evidence is not as clear as it might be, it was, I think, sufficiently established that the appellant was not carrying on the business of a moneylender on or after the 11th September, 1959. In the endorsement on the Summons he is described as "an ex-moneylender on 11.9.59" and in his evidence the appellant said that he was a "moneylender prior to 10.9.59". It was never suggested in the Court below that the appellant had in fact carried on the business of a moneylender since the coming into operation of the new Ordinance. The learned District Judge treated and accepted the appellant as an ex-moneylender.

The position was therefore that on the coming into force of the new Ordinance the appellant apparently did not propose to continue his business of moneylending but only to collect his outstanding accounts as at that date. In the view I take that does not constitute a carrying on of the business of a moneylender within the meaning of the new Ordinance nor is the appellant accordingly required to take out a licence merely to recover money previously lent by him. See *Ramanuj Pandey* v. *Stephen* [1] at p. 71. Of course, if he makes any fresh loans to, or enters into any new agreements with, a borrower he may be liable for carrying on business as a moneylender without holding a licence.

The term moneylender as defined in the new Ordinance does not, in my opinion, include a person who was a moneylender but who ceased to be one prior to its coming into force. The present tense is used throughout and the expression must, I think, be confined to a person who now carries on the business of moneylending after the coming into operation of the new Ordinance. The legislature could very easily have

used words to include those persons who previously had been moneylenders under the old Ordinance. In section 24 of the new Ordinance the legislature expressly dealt with loans made before the 11th September, 1959. If it wanted to include former moneylenders it would have been a simple matter to have done so. In my view the appellant is not a moneylender within the meaning of the new Ordinance and accordingly section 24 thereof does not apply to him.

One further matter remains to be disposed of. The learned District Judge on the facts held that the appellant had failed to discharge the onus cast upon him by section 24 and went on to say that he had serious doubts that the sum of $400 was lent by the appellant. He accepted the evidence of the respondent that only $100 was lent and gave judgment accordingly. The two matters which appear to have influenced the learned District Judge in coming to his findings of fact were:—

(1) the application of section 24 to these proceedings; and

(2) the improbability of a moneylender lending $400 to a borrower drawing $135 a month without any security.

I have already dealt with the first point while as to the second, I find myself unable to agree with the learned District Judge's conclusion.

In these circumstances, therefore, the appeal must be allowed and the judgment of the learned District Judge set aside and judgment entered for the appellant for $461.88 and costs both here and in the Court below.

At the hearing of this appeal, the respondent was not present and was not represented by Counsel but Mr. Gould appeared as *amicus curiae* and I am indebted to him for his assistance.

Appeal allowed.

Solicitors: *K. K. Bezboruah; Rodyk & Davidson.*

THE SINGAPORE HARBOUR BOARD v. IINO KAIUN KAISHA LTD.

[O.C.J. (Wee Chong Jin J.) March 9, 1961]

[Singapore — Admiralty Suit No. 14 of 1959]

Negligence — Collision between tug and ship — Master and crew of tug deemed to be servants of owners of ship — Whether owners of ship liable for negligence of crew of tug — Whether provision of incompetent crew amounted to fundamental breach of contract.

The Singapore Harbour Board were the owners of a steam tug, the *Pitho*, which sank when it collided with the defendant's ship, the *Takashima Maru*. The two questions which the Court had to consider were: (a) what was the cause of the collision, and (b) whether the towage conditions as specified in the towage contract applied to make the defendants liable. The relevant clause in the towage contract reads:

"Vessels and craft will be towed on the following conditions only:—

The master and crew of any tug whilst carrying out towage service shall be deemed to be the servants of and shall be under the orders and control of the owners, master and crew of the vessel or craft towed and the Board will not be answerable for any loss or damage whatever which may happen to or be occasioned by any vessels, boat or craft or any cargoes on board the same whilst such vessel boat or craft is in tow of or being assisted by any of the tugs of the Board and whether arising from any supposed negligence or default of the master or crew or from any defects or imperfections of the Board's tugs or machinery or towing gear however occasioned, and the owners or persons interested in the vessels, boats or craft or of the cargo on board the same so towed undertake to bear, satisfy and indemnify the Board against any such loss or damage."

Held: (1) no blame can be attached at all to the pilot for the collision. The collision was entirely due to the quartermaster of the *Pitho* negligently executing an order from his Serang to put the helm to starboard by putting the helm to port;

(2) at the time of the collision the *Pitho* had in response to orders from the pilot manoeuvred herself into a position alongside the starboard bow of the *Takashima Maru* for the purpose of taking in the tow line and one end of the tow line had been received by the crew of the *Pitho* though not made fast to the towing hook; the collision therefore occurred "whilst [the *Pitho* was] carrying out towage service" and the towage conditions applied;

(2) there was no fundamental breach of the contract of towage as one isolated act of negligence on the part of the helmsman was no evidence that the crew of the *Pitho* were incompetent;

(3) as the collision had occurred through the negligence of the helmsman of the *Pitho* whilst the *Pitho* was carrying out towage service, the defendants as owners of the *Takashima Maru* were vicariously liable to the plaintiffs for the negligence of their temporary servants.

Cases referred to:—

(1) *The Baltyk* [1948] P. 1.

(2) *The President van Buren* 132 L.T. 253.

ADMIRALTY ACTION.

C. H. Smith for the plaintiff.

J. E. Lloyd for the defendant.

Cur. Adv. Vult.

Wee Chong Jin J.: This is an Admiralty action *in personam* by the Singapore Harbour Board, the owner of the steam tug *Pitho* against Iino Kaiun Kaisha Ltd., the owners of the turbine-engined vessel *Takashima Maru* arising out of a collision between these two vessels which resulted in the sinking of the tug.

The collision occurred at about 7.20 p.m. on the 7th February, 1959, at the western entrance into Keppel Harbour while both vessels were passing through Keppel Heads. At the time of the collision the *Takashima Maru* with a draught of about 31 feet and heavily laden with general cargo was inward bound, and the *Pitho* had been engaged, at the request of the pilot on board the *Takashima Maru*, to provide towage service. The weather was good and the tide was flood of the force of approximately 3 to 4 knots and flowing west. At the time and generally there were strong currents and eddies in the area of water off Keppel Heads.

The *Takashima Maru* had arrived off Singapore at 7.25 p.m. the previous evening and was awaiting her turn to enter Keppel Harbour. The pilot assigned to take her in boarded her at 5.50 a.m. the next morning where she was anchored off the Eastern Quarantine Anchorage. Twenty minutes later she weighed anchor and proceeded towards the western entrance of Keppel Harbour. By the time she was lined up to